

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

IN RE

AIR CARGO SHIPPING SERVICES
ANTITRUST LITIGATION

MDL No. 1775

06-MD-1775 (JG) (VVP)

THIS DOCUMENT RELATES TO:
All Actions

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO AUTHORIZE
DISSEMINATION OF CLASS NOTICE AND TO SCHEDULE FAIRNESS HEARING**

Four proposed class settlements are currently pending before the Court. On September 8, 2010, the Court granted preliminary approval to three settlements entered between plaintiffs and the following defendants (1) Société Air France, Koninklijke Luchtvaart Maatschappij N.V., and Martinair Holland N.V. (the "Air France-KLM Settlement") [Order, ECF No. 1254]; (2) Japan Airlines International Co., Ltd. (the "Japan Airlines Settlement") [Order, ECF No. 1255]; and (3) AMR Corp. and American Airlines, Inc. (the "American Airlines Settlement") [Order, ECF No. 1256]. On October 13, 2010, the Court granted preliminary approval of a fourth settlement with defendant Scandinavian Airlines System and SAS Cargo Group A/S (the "SAS Settlement") [Order, ECF No. 1291].

Plaintiffs respectfully move the Court to schedule a Fairness Hearing for a date at least 120 days after the date of entry of the Proposed Order submitted herewith to consider (i) the fairness, reasonableness, and adequacy of the Air France-KLM Settlement, the Japan Airlines Settlement, the American Airlines Settlement, and the SAS Settlement; and (ii) plaintiffs' request for up to a total of \$1 million from the proceeds from the four settlements to be placed after the

effective dates of the settlements into the Plaintiffs' litigation fund to assist in prosecuting the claims against the non-settling defendants.

In addition, Plaintiffs respectfully move the Court to approve the dissemination of a single "Notice of Proposed Class Action Settlement" and a single "Publication Notice" to provide notice to class members of all four pending settlement, in the forms annexed as Exhibit 1 and 2 to the Proposed Order submitted herewith.

I. Under the Terms of the Preliminary Approval Orders, a Fairness Hearing Should Be Scheduled By the Court.

Plaintiffs respectfully request that the Court schedule a single Fairness Hearing in connection with the Air France, American Airlines, Japan Airlines, and SAS Settlements. At the hearing, the Court should consider whether each of the proposed settlements is fair, reasonable, and adequate and whether to approve the plaintiffs' request for a total of \$1 million to be placed into the Plaintiffs' litigation fund from the proceeds from the four settlements after final approval of these settlements and the Effective Dates has occurred. The request is intended to cover anticipated future litigation expenses such as experts' fees and document database expenses that will be incurred by plaintiffs in prosecuting the litigation against the non-settling defendants. All expenditures will be subject to Court approval at a later time.¹

The Proposed Order provides that class members requesting exclusion from each settlement class must "mail a request in written form by first class mail, postmarked no later than

¹ In plaintiffs' motion for preliminary approval of the Air France-KLM Settlement, plaintiffs requested that, after final approval and the Effective Date have occurred, the Court permit \$500,000 from the \$87 million proceeds from the Air France-KLM settlement to be used for litigation expenses. [ECF No. 1208 at 28]. In their motion for preliminary approval of the SAS Settlement, plaintiffs requested a total of \$1 million for litigation expenses from the Air France-KLM, American Airlines, Japan Airlines, and SAS Settlements. [ECF No. 1271-1 at 22 n.7]. The "Notice of Proposed Class Action Settlement" annexed as Exhibit 1 to the Proposed Order advises Class Members of this request.

60 days,” after the “Notice of Proposed Class Action Settlement” is mailed. Proposed Order ¶ 5. Papers in support of final approval are to be submitted 30 days prior to the Fairness Hearing. *Id.* ¶ 7. Class members who intend to object to the fairness, reasonableness, and adequacy of the settlements, and/or appear at the Fairness Hearing, must file and serve a signed statement 20 days or more prior to the Fairness Hearing. *Id.* ¶ 8.

Plaintiffs respectfully suggest that the scheduling of a Fairness Hearing for a date at least 120 days after the entry of the Proposed Order will provide parties and class members sufficient time to comply with each of these deadlines.

II. Plaintiffs’ Request Authorization to Disseminate A Single Class Notice of All Four Settlements.

Plaintiffs request authorization to disseminate a single “Notice of Proposed Class Action Settlement” and a single “Publication Notice” to provide class members with notice of the Air France-KLM Settlement, the Japan Airlines Settlement, the American Settlement, and the SAS Settlement. The forms of the Notices to be disseminated are identical to those the Court approved in connection with the SAS Settlement [*See* Exhibits 1 and 2 to Proposed SAS Preliminary Approval Order, ECF No. 1271-3]. Copies of each of these Notices are attached as Exhibits 1 and 2 to the Proposed Order submitted herewith.

The use of the combined Notices is intended to minimize the costs of the notice program for each settlement. Thus, Plaintiffs respectfully move the Court to authorize the dissemination of the Notices attached to the Proposed Order.

Dated: New York, New York
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